

86<sup>th</sup> Legislative Session – 2011

Committee: House Commerce and Energy

Monday, February 07, 2011

P - Present  
E - Excused  
A - Absent

Roll Call

P Solum, Chair  
P Conzet, Vice-Chair  
P Willadsen  
E Deelstra  
P Greenfield  
P Novstrup (David)  
P Jensen  
P Miller  
P Hubbel  
P Fargen  
P Hawley  
P Jones  
P Kirschman

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Chairman Solum .

MOTION: TO APPROVE THE MINUTES OF WEDNESDAY, FEBRUARY 2, 2011

Moved by: Conzet  
Second by: Hawley  
Action: Prevailed by voice vote.

THE CHAIR DEFERRED HB 1256 UNTIL WEDNESDAY, FEBRUARY 9, 2011

HB 1202: require the state to provide the public with access to an electronic database containing certain information on any loans, grants, or tax rebates provided by the state for the purpose of economic development.

Presented by: Representative Bernie Hunhoff  
Opponents: Mike Youngberg, GOED, Pierre

MOTION: DO PASS HB 1202

Moved by: Fargen  
Second by: Kirschman  
Action: Was not acted on.

MOTION: CALL THE QUESTION

Moved by: Conzet  
Second by: Willadsen  
Action: Prevailed by voice vote.

MOTION: SUBSTITUTE MOTION DEFER HB 1202 TO THE 41<sup>ST</sup> LEGISLATIVE DAY

Moved by: Willadsen  
Second by: Jensen  
Action: Prevailed by roll call vote. (7-5-1-0)

Voting Yes: Solum, Conzet, Willadsen, Novstrup (David), Jensen, Miller, Hubbel

Voting No: Greenfield, Fargen, Hawley, Jones, Kirschman

Excused: Deelstra

HB 1207: allow the consignment or auction of certain out-of-state vehicles and motorcycles.

Presented by: Representative Mark Kirkeby  
Proponents: Debra Hillmer, Director-Division of Motor Vehicles  
Todd McPherson, McPherson Auction Co., Rapid City  
Kevin McPherson, McPherson Auction Co., Rapid City  
Lindsey Riter-Rapp SD Auto Dealers

MOTION: AMEND HB 1207

1207oa

On page 1, line 6, of the printed bill, after "state" insert "who has obtained a permit under the provisions of section 3 of this Act".

On page 1, line 8, after "seller" insert "or reassigned to the licensed dealer".

On page 1, line 12, after "state" insert "who has obtained a permit under the provisions of section 3 of this Act".

On page 1, line 14, after "seller" insert "or reassigned to the licensed dealer".

On page 1, after line 15, insert:

" Section 3. That § 32-6B-5 be amended to read as follows:

32-6B-5. The following persons are exempt from the provisions of this chapter:

- (1) Any employee of any person licensed as a vehicle dealer if engaged in the specific performance of the employee's duties;
- (2) Any financial institution chartered or licensed in any other jurisdiction that acquires vehicles as an incident to the financial institution's regular business and sells the vehicles to dealers licensed under this chapter;
- (3) Any nonprofit automobile club if selling automobiles twenty years old or older under the provisions of chapter 32-3;
- (4) Any person acting as an auctioneer if auctioning South Dakota titled vehicles for a licensed dealer or a person who is exempt from the provisions of this chapter;
- (5) Any person engaged in the business of manufacturing or converting new vehicles if selling the vehicles to a licensed dealer holding a franchise from the original manufacturer of the vehicle;
- (6) Any person engaged in the business of manufacturing or customizing motor vehicles may display but may not sell any motor vehicle at an event, if the event lasts three or more days and if the person registers with and purchases a permit from the Department of Revenue and Regulation. If purchased in advance of the event, the person shall pay a fee of two hundred fifty dollars for a ten-day temporary permit. However, if the permit is purchased at the event, the person shall pay a fee of five hundred dollars for the temporary permit. This subdivision does not apply to any customized motorcycle being built for and displayed during a sponsored event where the participants had to qualify through competition. A permit is required if any customized motorcycle is being displayed outside the sponsored event. Any person found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date

of violation;

- (7) Any person engaged in the business of manufacturing trailers may display but may not sell any trailers at an event, if the event lasts three or more days and if the person registers with and purchases a permit from the Department of Revenue and Regulation. If purchased in advance of the event, the person shall pay a fee of two hundred fifty dollars for a ten-day temporary permit. However, if the permit is purchased at the event, the person shall pay a fee of five hundred dollars for the temporary permit. Any person found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation;
- (8) Any person may sell motorcycles at an event, if the event lasts three or more days and if the person registers and purchases a permit from the Department of Revenue and Regulation. Before issuance of a permit, the applicant shall provide proof the applicant is a licensed dealer in the applicant's own state and has no outstanding dealer violations. The permit shall only be issued if the new motorcycles being sold are not franchised in this state. If purchased in advance of the event, the person shall pay a fee of two hundred fifty dollars for a ten-day temporary permit. However, if the permit is purchased at the event, the person shall pay a fee of five hundred dollars for the temporary permit. Any person found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation;
- (9) Any person may sell trailers at an event, if the event lasts three or more days and if the person registers and purchases a permit from the Department of Revenue and Regulation. Before issuance of a permit, the applicant shall provide proof the applicant is a licensed dealer in the applicant's own state and has no outstanding dealer violations. The permit will only be issued if the trailers being sold are not franchised in this state. If purchased in advance of the event, the person shall pay a fee of two hundred fifty dollars for a ten-day temporary permit. However, regardless of whether or not there is a franchise in this state, any person may display a trailer at such an event. However, if the permit is purchased ~~before~~ at the event, the person shall pay a fee of five hundred dollars for the temporary permit. Any person found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation;
- (10) Any person not engaged in the sale of vehicles as a business and is disposing of vehicles used solely for personal use if the vehicles were acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter;
- (11) Any person not engaged in the sale of vehicles as a business who operates fleets of vehicles and is disposing of vehicles used in the person's business if the same were acquired and used in good faith and not for the purpose of avoiding the provisions of this

chapter;

- (12) Any person who sells less than five vehicles in a twelve-month period, unless the person is licensed as a dealer in another state or holds himself or herself out as being in the business of selling vehicles. However, if the vehicles are travel trailers, any person who sells less than three travel trailers in a twelve-month period;
- (13) Any public officer while performing the officer's official duties;
- (14) Any receiver, trustee, personal representative, guardian, or other person appointed by or acting under the judgment or order of any court;
- (15) Any regulated lenders as that term is defined in § 54-3-14, any insurance company authorized to do business in this state, or any financing institution as defined in and licensed pursuant to chapter 54-4 that acquires vehicles as an incident to its regular business;
- (16) Any towing agency that acquires and sells a vehicle which has been towed at the request of a private landowner under the provision of chapter 32-36 or at the request of a law enforcement officer, if no vehicle is sold for an amount over two hundred dollars;
- (17) Any vehicle rental and leasing company that sells its used vehicles to dealers licensed under this chapter; ~~and~~
- (18) Any South Dakota nonprofit corporation which gives a donated motor vehicle to a needy family or individual; and
- (19) Any dealer licensed in another state may sell any vehicle or motorcycle that is not titled in South Dakota if the vehicle is at least twenty years old and the motorcycle is at least thirty years old at a public auction on consignment if the title is issued in the name of the dealer or reassigned to the dealer and the dealer purchases a permit from the Department of Revenue. Before issuance of a permit, the applicant shall provide proof the applicant is a licensed dealer in the applicant's own state and has no outstanding dealer violations. If purchased in advance of the auction, the dealer shall pay a fee of two hundred fifty dollars for the permit. However, if the permit is purchased at or after the auction, the dealer shall pay a fee of five hundred dollars for the temporary permit. Any dealer found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation."

Moved by: Conzet

Second by: Fargen

Action: Was not acted on.

MOTION: AMEND THE PENDING AMENDMENT

1207sa

On the previous amendment (1207oa), delete the On page 1, line 8 and On page 1, line 14 instructions.

Moved by: Greenfield  
Second by: Fargen  
Action: Prevailed by voice vote.

MOTION: AMEND THE PENDING AMENDMENT

1207sb

On the previous amendment (1207oa), in Section 3, subdivision (19), line 4, delete "or reassigned to the dealer"

Moved by: Greenfield  
Second by: Fargen  
Action: Prevailed by voice vote.

MOTION: AMEND THE PENDING AMENDMENT

1207sd

On the previous amendment (1207oa), in Section 3, subdivision (6), on line 5 overstrike "two" and insert "one" and on line 6 overstrike "five" and insert "three".

Moved by: Jensen  
Second by: Hubbel  
Action: Withdrawn.

MOTION: AMEND THE PENDING AMENDMENT

1207sc

On the previous amendment (1207oa), delete the On page 1, line 6, instruction and replace it with: On page 1, line 6, of the printed bill, after "dealer" insert "who has obtained a permit under the provisions of section 3 of this Act but who is"

On the previous amendment (1207oa), delete the On page 1, line 12, instruction and replace it with: On page 1, line 12, after "dealer" insert "who has obtained a permit under the provisions of section 3 of this Act but who is"

Moved by: Greenfield  
Second by: Fargen  
Action: Prevailed by voice vote.

MOTION: CALL THE QUESTION

Moved by: Conzet  
Second by: Greenfield  
Action: Prevailed by voice vote.

MOTION: SUBSTITUTE MOTION AMEND HB 1207

1207se

On page 1, line 6, of the printed bill, after "dealer" insert "who has obtained a permit under the provisions of section 3 of this Act but who is".

On page 1, line 12, after "dealer" insert "who has obtained a permit under the provisions of section 3 of this Act but who is".

On page 1, after line 15, insert:

" Section 3. That § 32-6B-5 be amended to read as follows:

32-6B-5. The following persons are exempt from the provisions of this chapter:

- (1) Any employee of any person licensed as a vehicle dealer if engaged in the specific performance of the employee's duties;
- (2) Any financial institution chartered or licensed in any other jurisdiction that acquires vehicles as an incident to the financial institution's regular business and sells the vehicles to dealers licensed under this chapter;

- (3) Any nonprofit automobile club if selling automobiles twenty years old or older under the provisions of chapter 32-3;
- (4) Any person acting as an auctioneer if auctioning South Dakota titled vehicles for a licensed dealer or a person who is exempt from the provisions of this chapter;
- (5) Any person engaged in the business of manufacturing or converting new vehicles if selling the vehicles to a licensed dealer holding a franchise from the original manufacturer of the vehicle;
- (6) Any person engaged in the business of manufacturing or customizing motor vehicles may display but may not sell any motor vehicle at an event, if the event lasts three or more days and if the person registers with and purchases a permit from the Department of Revenue and Regulation. If purchased in advance of the event, the person shall pay a fee of two hundred fifty dollars for a ten-day temporary permit. However, if the permit is purchased at the event, the person shall pay a fee of five hundred dollars for the temporary permit. This subdivision does not apply to any customized motorcycle being built for and displayed during a sponsored event where the participants had to qualify through competition. A permit is required if any customized motorcycle is being displayed outside the sponsored event. Any person found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation;
- (7) Any person engaged in the business of manufacturing trailers may display but may not sell any trailers at an event, if the event lasts three or more days and if the person registers with and purchases a permit from the Department of Revenue and Regulation. If purchased in advance of the event, the person shall pay a fee of two hundred fifty dollars for a ten-day temporary permit. However, if the permit is purchased at the event, the person shall pay a fee of five hundred dollars for the temporary permit. Any person found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation;
- (8) Any person may sell motorcycles at an event, if the event lasts three or more days and if the person registers and purchases a permit from the Department of Revenue and Regulation. Before issuance of a permit, the applicant shall provide proof the applicant is a licensed dealer in the applicant's own state and has no outstanding dealer violations. The permit shall only be issued if the new motorcycles being sold are not franchised in this state. If purchased in advance of the event, the person shall pay a fee of two hundred fifty dollars for a ten-day temporary permit. However, if the permit is purchased at the event, the person shall pay a fee of five hundred dollars for the temporary permit. Any person found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation;



- (9) Any person may sell trailers at an event, if the event lasts three or more days and if the person registers and purchases a permit from the Department of Revenue and Regulation. Before issuance of a permit, the applicant shall provide proof the applicant is a licensed dealer in the applicant's own state and has no outstanding dealer violations. The permit will only be issued if the trailers being sold are not franchised in this state. If purchased in advance of the event, the person shall pay a fee of two hundred fifty dollars for a ten-day temporary permit. However, regardless of whether or not there is a franchise in this state, any person may display a trailer at such an event. However, if the permit is purchased ~~before~~ at the event, the person shall pay a fee of five hundred dollars for the temporary permit. Any person found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation;
- (10) Any person not engaged in the sale of vehicles as a business and is disposing of vehicles used solely for personal use if the vehicles were acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter;
- (11) Any person not engaged in the sale of vehicles as a business who operates fleets of vehicles and is disposing of vehicles used in the person's business if the same were acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter;
- (12) Any person who sells less than five vehicles in a twelve-month period, unless the person is licensed as a dealer in another state or holds himself or herself out as being in the business of selling vehicles. However, if the vehicles are travel trailers, any person who sells less than three travel trailers in a twelve-month period;
- (13) Any public officer while performing the officer's official duties;
- (14) Any receiver, trustee, personal representative, guardian, or other person appointed by or acting under the judgment or order of any court;
- (15) Any regulated lenders as that term is defined in § 54-3-14, any insurance company authorized to do business in this state, or any financing institution as defined in and licensed pursuant to chapter 54-4 that acquires vehicles as an incident to its regular business;
- (16) Any towing agency that acquires and sells a vehicle which has been towed at the request of a private landowner under the provision of chapter 32-36 or at the request of a law enforcement officer, if no vehicle is sold for an amount over two hundred dollars;
- (17) Any vehicle rental and leasing company that sells its used vehicles to dealers licensed

under this chapter; ~~and~~

- (18) Any South Dakota nonprofit corporation which gives a donated motor vehicle to a needy family or individual; and
- (19) Any dealer licensed in another state may sell any vehicle or motorcycle that is not titled in South Dakota if the vehicle is at least twenty years old and the motorcycle is at least thirty years old at a public auction on consignment if the title is issued in the name of the dealer and the dealer purchases a permit from the Department of Revenue. Before issuance of a permit, the applicant shall provide proof the applicant is a licensed dealer in the applicant's own state and has no outstanding dealer violations. If purchased in advance of the auction, the dealer shall pay a fee of two hundred fifty dollars for the permit. However, if the permit is purchased at or after the auction, the dealer shall pay a fee of five hundred dollars for the temporary permit. Any dealer found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation."

Moved by: Novstrup (David)  
Second by: Conzet  
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1207 AS AMENDED

Moved by: Greenfield  
Second by: Fargen  
Action: Prevailed by roll call vote. (10-2-1-0)

Voting Yes: Solum, Conzet, Greenfield, Novstrup (David), Jensen, Miller, Hubbel, Fargen, Hawley, Kirschman

Voting No: Willadsen, Jones

Excused: Deelstra

HB 1209: provide for the establishment of rural community-based energy development projects.

Presented by: Representative Frank Kloucek  
Opponents: Jan Talley, Department of Revenue and Regulation

MOTION: DO PASS HB 1209

Moved by: Fargen  
Second by: Jensen  
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION DEFER HB 1209 TO THE 41<sup>ST</sup> LEGISLATIVE DAY

Moved by: Conzet  
Second by: Jensen  
Action: Prevailed by roll call vote. (8-4-1-0)

Voting Yes: Solum, Conzet, Willadsen, Greenfield, Novstrup (David), Jensen, Fargen, Hubbel

Voting No: Miller, Hawley, Jones, Kirschman

Excused: Deelstra

MOTION: ADJOURN

Moved by: Greenfield  
Second by: Fargen  
Action: Prevailed by voice vote.

Diane Mellan  
Committee Secretary

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Roger D. Solum, Chair